IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1401 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KAILASHBEN MOHANBHAI PATEL

Versus

ISHWARBHAI MAGANLAL DESAI

Appearance:

Mr.A.J. Patel, for MR MI PATEL for Petitioners

MR SUNIL C PATEL for the Respondent.

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 04/08/2000

ORAL JUDGEMENT

1. The petitioners herein are the original plaintiffs of Special Civil Suit No.128 of 1991. The Civil Suit has been filed for specific performance of an agreement. It is the case of the plaintiffs in the said suit that the land mentioned in paragraph 2 of the plaint

is agreed to be sold to them by the defendant, that the plaintiffs are agriculturists and the land in question was given to them by agreement for the purpose of producing fruits, flowers etc. The plaintiffs have based their case on the basis of an agreement regarding permanent lease. At this stage, we are not concerned with the detailed averments in the plaint. However, as stated earlier, the suit is for specific performance of an agreement of permanent lease dated 11.10.1988.

2. In the said suit, the defendant filed written statement and resisted the same on various grounds and one of the contentions is that the plaintiff is not an agriculturist.

3. The learned trial Judge, after framing necessary issues, has referred to issue No.9 below Exhibit 82 to the Tenancy Mamlatdar, Navsari as the aforesaid issue was required to be referred to the Mamlatdar, because the same was within the competence of only the Mamlatdar under the Tenancy Act. The original plaintiffs have challenged the aforesaid order by filing this revision application on the ground that the issue No.9 was framed without hearing them and that the same was not required to be referred to the Mamlatdar. It is argued that since the aforesaid permanent lease is regarding cultivation of sugarcane, fruits and flowers, the provisions of the Act are not applicable.

4. Against the aforesaid argument, Mr.Sunil C. Patel for the respondent has argued that in the Written Statement at Exhibit 14, the defendants have already raised a dispute that the plaintiffs are not agriculturists and on the basis of the said pleading, issue is framed. He further submitted that once such issue is framed, the same is required to be referred to the tenancy authorities under Section 85A of the Tenancy Act.

5. I have heard arguments of both the sides. In view of the decision of the Honourable Supreme Court in Gundaji Satwaji Shinde v. Ramchandra Bhikaji Joshi, reported in AIR 1979 SC 653, the issue whether the plaintiff is agriculturist is involved. The said issue is in the exclusive jurisdiction of the Mamlatdar to decide and jurisdiction of the Civil Court is barred. Therefore, the issue as it is which is framed by the court is, no doubt, required to be referred to the Mamlatdar in view of the aforesaid clear-cut judgment of the Honourable Supreme Court. However, it is the say of the petitioner that there was no necessity to raise such

issue at all as they were merely cultivating sugarcane and as per Section 43-A, Tenancy Act is not applicable. He submitted that in any case before raising the issue, they should have given opportunity whether such issue should be framed or not. Mr.Patel for the respondent fairly submitted that if the petitioner is given hearing for the purpose of framing issue on this aspect, he has no objection if the matter is sent back to the trial court. In that view of the matter, this Revision is partly allowed. The learned trial Judge is directed to give hearing to the petitioner for the purpose of framing this issue, which is already framed at Exhibit 9. It is clarified that this hearing is given only for the purpose whether to retain this issue or delete the same. If after hearing the petitioner, i.e. original plaintiff, the Court ultimately thinks that the issue is required to be retained, then, naturally, the same will be required to be referred to the Mamlatdar in view of the judgment of the Supreme Court, of which reference has been made earlier. Mr.Patel for the respondent submitted that in view of the averment in the written statement, this issue will naturally arise because they have already stated in the written statement that the plaintiff is not an agriculturist. However, in view of the fact that as per the say of the petitioner, without hearing him the issue was framed, the matter is sent back to the trial court for this limited purpose. The learned trial Judge, after hearing the concerned parties, may retain the issue or may delete the issue as it thinks fit and the said question, therefore, may be decided after hearing the parties and in accordance with law. However, as stated earlier, Mr.A.J. Patel for the petitioner has also fairly argued that if the issue is ultimately retained by the Court, then it will have to be referred to the Mamlatdar. If ultimately the issue is not retained and it is deleted, naturally, there may not be any question of referring the same. While deciding the question, therefore, the court will first consider whether this issue is required to be framed or not and ultimately if it is decided that the issue is required to be framed and is required to be kept as it is, then it will be referred to the Mamlatdar and Revenue Authority.

6. Subject to the aforesaid observations, this C.R.A. is allowed to the aforesaid extent. Rule is partly made absolute. There shall be no order as to costs.

7. Since the proceedings are old one and it is only at the issue stage, the trial court is directed to decide this question of either keeping or deleting the issue in

question expeditiously and in any case, before 31st October, 2000.

Writ of this Court to be sent to the learned trial Judge forthwith.

(P.B. Majmudar, J.)

(apj)